

4-20-2004

Office of the Secretary
Federal Trade Commission
Room 159-H
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: CAN-SPAM Act Rulemaking, Project No. R411008

Dear Sir or Madam:

In recent months, the *Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003* (“CAN SPAM” or the “Act”) has come into play as this country’s first legal weapon to control unsolicited commercial e-mail. While our organization supports this purpose, we are seeking your assistance in preventing CAN SPAM from eradicating the use of e-mail as an efficient, effective, and economical communications resource for 501(c)3 alumni associations.

With the fiscal crisis facing many alumni associations today, we must rely more than ever on the ability to reach out to our alumni and friends for support. E-mail provides one of the best tools that an alumni association can use. It has proved to be a non-intrusive, inexpensive way to communicate with our growing list of alumni, friends, and other supporters with whom we have built relationships and engaged in the work of our schools. Unless our e-mail messages are reclassified as “transactional or relationship messages” under CAN SPAM, our alumni associations will be deprived of the financial and other benefits earned from using e-mail to reach out to our academic communities.

For the reasons set forth below, we urge the Commission to hold that all e-mail communications between 501(c)3 alumni associations and their constituencies be categorically classified as transactional. We show that this result is consistent with the intent and language of CAN SPAM. We further strongly urge the Commission to refrain from proposing adoption of a national Do-Not-E-mail Registry.

The Effects of CAN SPAM on Alumni Associations

CAN SPAM regulates “commercial electronic mail messages,” which have the primary purpose of advertising or promoting a commercial product or service. As it stands, the law makes no exception for messages sent by 501(c)3 alumni associations. Messages that promote a theatre production, on-campus exhibit, or sporting event when there is a charge for admittance are arguably

“commercial” messages subject to the requirements of the Act. Messages that a 501(c)3 alumni association sends to alumni and friends who join their alumni association appear to be treated the same under the Act as a “get-rich-quick” proposal sent to millions of impersonal contacts. The law might even restrict messages to prospective students, regardless of whether the prospective student has initiated the e-mail exchange.

Because the law presently makes no distinction between commercial spam and the legitimate, relationship-building communications that we send to our alumni and friends, the intended effects of CAN SPAM are backfiring in the educational sector. Many of the Act’s requirements directly affect our economic ability to reach out to those within our own community. We typically send 1 –3 e-mails each month to our alumni. Topics range from our monthly e-newsletter, to information about upcoming alumni programs as well as reminders that their membership in the alumni association is about to expire.

CAN SPAM requires commercial electronic mail messages to include a clear and conspicuous notice of the recipient’s right to opt-out of receiving future commercial messages from the sender. Messages must provide a means for recipients to submit an opt-out request, and senders must honor any opt-out requests when they receive them. These requirements will affect the way that alumni view our message when our e-mails are overridden by CAN SPAM compliance language, and there is no practical way for us to define the e-mails we send by their “primary purpose.” These requirements also have the potential to reduce drastically the size of our e-mail contact list, thereby cutting a core line of communication between our alumni association and our alumni and friends.

The time, money, and effort devoted to maintaining vital contacts with alumni and friends are too valuable to waste by a law intended to control the proliferation of unsolicited commercial and pornographic e-mail. Unless changes are made, the Act’s requirements will force organizations like ours to resort to traditional and expensive modes of communications, including mail and telephone, to stay in touch with our alumni. Given the financial outlook for many alumni associations and affiliated entities today, the use of more expensive means to communicate with alumni and other supporters is unsustainable.

The CAN SPAM concerns of 501(c)3 alumni associations are heightened by the prospect of a national “Do-Not-E-mail” registry. Congress has commissioned the FTC to set forth a plan and timetable for establishing a nationwide Do-Not-E-mail registry by September 2004. Alumni and other members of our academic communities that enroll with the registry to avoid unsolicited marketing and pornographic messages will also not receive messages from our organization, unless alumni association e-mails are separated from “commercial” e-mail. The task of asking each individual alumni, friend, or other supporter to “opt-in” to our e-mail distribution list would be a tremendously costly and nearly impossible achievement.

Transactional and Relationship Messages

We are seeking a definitional separation between messages sent by or on behalf of 501(c)3 alumni associations and “commercial” messages defined by the Act. Communications with alumni and friends – whether by mail, telephone, or e-mail – are inherently transactional, relationship-building messages that should not share definitional status with commercial spam.

The statutory definition of “transactional or relationship message” includes a variety of messages typically sent to individuals who have entered into a transaction or other ongoing relationship with the sender (e.g., messages that confirm a purchase or provide information regarding a membership, subscription, or account). Messages sent in furtherance of the ongoing relationship that 501(c)3 alumni associations share with alumni and friends are mistakenly absent from the Act’s “transactional or relationship” category.

We believe that all of our messages are primarily transactional because, in one way or another, all of them convey information about the alumni association, school, its activities, and other matters of interest to the recipients. The responses we typically receive from communications of this type provide clear evidence of the perceived value of these communications to our constituent groups. For example, we routinely receive e-mails from alumni thanking us for keeping them informed in a timely and efficient manner about the University of North Carolina and their alumni association program offerings.

The Commission has the ability to expand the types of messages that are treated as transactional or relationship messages for CAN SPAM purposes. The Commission has asked for public comment on defining additional types of messages that might warrant exclusion from the definition of “commercial electronic message.” We propose that the Commission add to the definition of “transactional or relationship message” any message sent from or on behalf of a 501 (c)3 alumni association to faculty, staff, students, alumni, and friends. This definitional change will properly reclassify relationship-based communications to our alumni and other supporters under the “transactional or relationship” category.

If you have any questions concerning our comments, or if we may be of further assistance to you in connection with this issue, please do not hesitate to contact Roger Nelsen, Director of Alumni Records and Information Systems at 919-962-7055.

Sincerely,

Doug Dibbert,
President, UNC General Alumni Association

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